



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 22, 2022

IN THE MATTER OF:

Appeal Board No. 622640

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective October 29, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by ST. ANTHONY COMMUNITY HOSPITAL prior to October 29, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by and on behalf of the claimant. By decision filed March 21, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a further hearing. The employer's Notice of Protest dated December 23, 2021, indicates that the claimant was separated from her employment on October 19, 2021, because "claimant provoked discharge by failing to comply with Covid-19 vaccination mandate. Claimant knew or should have known that their actions would jeopardize their job." The parties are hereby on notice that the alternative determination of voluntary separation due to provoked discharge, effective October 29, 2021, shall be included as an alternate initial determination to be considered. The parties shall have an additional opportunity to testify and produce evidence regarding the claimant's separation from employment.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the determination of misconduct as well as the alternative determination of voluntary separation, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER